

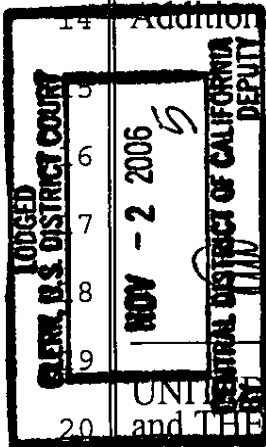
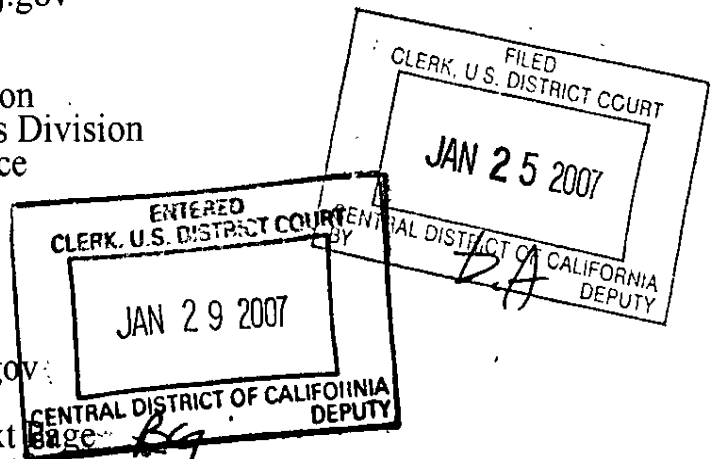
1 SUE ELLEN WOOLDRIDGE
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice

3 MATTHEW A. FOGELSON
4 Environmental Enforcement Section
Environment & Natural Resources Division
5 United States Department of Justice
301 Howard Street, Suite 1050
6 San Francisco, CA 94105
Telephone: (415) 744-6470
7 Facsimile: (415) 744-6476
E-mail: Matthew.Fogelson@usdoj.gov

8 ELIZABETH F. KROOP
9 Environmental Enforcement Section
Environment & Natural Resources Division
10 United States Department of Justice
P.O. Box 7611
11 Ben Franklin Station
Washington, DC 20044
12 Telephone: (202) 514-5244
Facsimile: (202) 514-2583
13 E-mail: Elizabeth.Kroop@usdoj.gov

14 Additional Counsel Listed on Next Page

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

15 UNITED STATES OF AMERICA
16 and THE STATE OF CALIFORNIA

21 Plaintiffs,

22 v.

23 SAINT-GOBAIN CORPORATION

25 Defendant.

20 CASE NO. CV 06-07047-ABC

26 CONSENT DECREE

1 DEBRA WONG YANG
United States Attorney
2 Central District of California
1200 U.S. Courthouse
3 312 North Spring Street
Los Angeles, California 90012
4 Telephone: (213) 894-2434
Facsimile: (213) 894-0141

5 Attorneys for Plaintiff United States of America
6

7 BILL LOCKYER
Attorney General of the State of California
8 TOM GREENE
Chief Assistant Attorney General
9 THEODORA BERGER
Senior Assistant Attorney General
10 DONALD A. ROBINSON
Supervising Deputy Attorney General

11 ANN RUSHTON
12 California Bar # 62597
Deputy Attorney General
13 California Department of Justice
300 South Spring Street
14 Los Angeles, California 90013
Tel: (213) 897-2608
15 Fax: (213) 897-2802
ann.rushton@doj.ca.gov

16 Attorneys for the California
17 Department of Toxic Substances Control

18 LAUREN P. ALTERMAN
19 Associate General Counsel
Saint-Gobain Corporation
20 750 E. Swedesford Road
Valley Forge, PA 19482
21 Telephone: (610)-341-7838
Facsimile: (610)-341-7087
22 lauren.p.alterman@saint-gobain.com

23 Attorney for Defendant
24
25
26
27
28

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California ("State"), on behalf of the Department of Toxic Substances Control ("DTSC"), have filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, seeking performance of response actions and reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Puente Valley Operable Unit ("PVOU") of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the "Site").

B. This Consent Decree provides for the reimbursement of a portion of the United States' Past Response Costs and a portion of the State DTSC's Past Response Costs at this Site by Saint-Gobain Corporation (as successor in interest to Saint-Gobain Calmar Inc.) ("Settling Defendant").

C. By entering into this Consent Decree, Settling Defendant does not admit liability to or arising out of the transactions or occurrences alleged in the Complaint or to any other person related to the Site.

D. The United States, the State DTSC, and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 6973, 9606, 9607, and 9613(b), and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State DTSC, and upon Settling Defendant and its beneficiaries, heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Basin-wide Response Costs" shall mean costs, including but not limited to direct and indirect costs, including accrued Interest, that the United States has paid for basin-wide (non-operable unit) response actions in connection with the San Gabriel Valley Superfund Sites, Areas 1- 4.

b. "Carrier Consent Decree" shall mean the consent decree entered on April 28, 2006 in the matter of United States v. Carrier Corporation, Civ. Action No. 05-6022 ABC (FMOx)(C.D. Cal.), relevant portions of which are attached hereto as Appendix A.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.

1 § 9601, et seq.

2 d. "Consent Decree" shall mean this Consent Decree and
3 Appendix A attached hereto.

4 e. "Day" shall mean a calendar day. In computing any period of
5 time under this Consent Decree, where the last day falls on a Saturday, Sunday, or
6 federal holiday, the period shall run until the close of business of the next working
7 day.

8 f. "DOJ" shall mean the United States Department of Justice and
9 any successor departments, agencies, or instrumentalities of the United States.

10 g. "DTSC" shall mean the State of California Department of
11 Toxic Substances Control and any successor departments or agencies.

12 h. "Effective Date" shall mean the date of entry of this Consent
13 Decree.

14 i. "EPA" shall mean the United States Environmental Protection
15 Agency and any successor departments, agencies, or instrumentalities of the
16 United States.

17 j. "EPA Hazardous Substance Superfund" shall mean the
18 Hazardous Substance Superfund established by the Internal Revenue Code,
19 26 U.S.C. § 9507.

20 k. "ESD" shall mean the Explanation of Significant Differences
21 issued by EPA on June 14, 2005 for the Record of Decision.

22 l. "Facility" shall mean the Site.

23 m. "Future DTSC Response Costs" shall mean all costs, including
24 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide
25 Response Costs allocated to the Site, including Interest, that the State DTSC pays
26 or incurs at or relating to the Site after the date of entry of this Consent Decree,
27 but prior to the later of (i) the date 8 years from the Operational and Functional
28 Date of the Carrier Consent Decree, or (ii) the date of issuance of a final Record of

1 Decision for the Site.

2 n. "Future Response Costs" shall mean all costs, including but not
3 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
4 Costs allocated to the Site, including Interest, that the United States or any third
5 party pays or incurs at or relating to the Site after the date of entry of this Consent
6 Decree, but prior to the later of (i) the date 8 years from the Operational and
7 Functional Date of the Carrier Consent Decree, or (ii) the date of issuance of a
8 final Record of Decision for the Site.

9 o. "Interest" shall mean interest at the applicable rate specified for
10 interest on investments of the Hazardous Substance Superfund established by
11 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance
12 with 42 U.S.C. § 9607(a).

13 p. "Oversight Costs" shall mean all direct and indirect costs,
14 including Interest, that the United States or the DTSC incurs in connection with
15 monitoring and supervising performance of the Response Work by other persons.

16 q. "Paragraph" shall mean a portion of this Consent Decree
17 identified by an arabic numeral or an upper or lower case letter.

18 r. "Parties" shall mean the United States, the State DTSC, and the
19 Settling Defendant.

20 s. "Past DTSC Response Costs" shall mean all costs, including
21 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide ,
22 Response Costs allocated to the Site, including Interest, that the State DTSC has
23 paid or incurred at the Site through and including the date of entry of this Consent
24 Decree.

25 t. "Past Response Costs" shall mean all costs, including but not
26 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
27 Costs allocated to the Site, including Interest, that the United States or any third
28 party has paid or incurred at the Site through and including the date of entry of this

1 Consent Decree.

2 u. "Plaintiffs" shall mean the United States and the State of
3 California Department of Toxic Substances Control.

4 v. "Record of Decision" or "ROD" shall mean the September 30,
5 1998 EPA Interim Record of Decision for the Puente Valley Operable Unit of the
6 San Gabriel Valley Superfund Sites, Areas 1-4.

7 w. "Response Work" shall mean the design and implementation of
8 any remedial measures, including the operation and maintenance thereof,
9 encompassed within the Record of Decision as modified by the ESD.

10 x. "Section" shall mean a portion of this Consent Decree
11 identified by a Roman numeral.

12 y. "Settling Defendant" shall mean Saint-Gobain Corporation (as
13 successor in interest to Saint-Gobain Calmar Inc.) and any corporate successor(s)
14 but only to the extent that such corporate successor(s) has no independent liability
15 for the Site other than liability derived from that entity's relationship to or
16 affiliation with the Settling Defendant.

17 z. "Site" shall mean the facility, which consists of an area of
18 groundwater contamination in Los Angeles County, California, located in the
19 geographic area designated on the National Priorities List as the San Gabriel
20 Valley Superfund Site, Area 4 [see 49 Fed. Reg. 19480 (1984)], and identified as
21 the Puente Valley Operable Unit.

22 aa. "State" shall mean the State of California.

23 bb. "United States" shall mean the United States of America,
24 including its departments, agencies and instrumentalities.

25 **V. REIMBURSEMENT OF RESPONSE COSTS**

26 4. Payments to the EPA Hazardous Substance Superfund and to the
27 State DTSC. Settling Defendant shall pay to the EPA Hazardous Substance
28 Superfund the amount of three hundred seventy-six thousand and three hundred

1 twenty dollars (\$376,320) in reimbursement of Past Response Costs and pay to the
2 State DTSC two thousand dollars (\$2,000) in reimbursement of Past DTSC
3 Response Costs. Payment shall be made as follows:

4 a. Settling Defendant shall, within fifteen (15) working Days after entry
5 of this Consent Decree, remit the principal of three hundred seventy-six thousand
6 and three hundred twenty dollars (\$376,320) to the United States. Payment to the
7 United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the
8 U.S. Department of Justice in accordance with current EFT procedures,
9 referencing the USAO File Number, EPA Region IX, the Site/Spill ID Number 09-
10 8V, and DOJ Case Number 90-11-2-354/23. Payment shall be made in accordance
11 with instructions provided to the Settling Defendant by the Financial Litigation
12 Unit of the United States Attorney's Office for the Central District of California
13 following lodging of the Consent Decree. Any payments received by the
14 Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next
15 business Day. Settling Defendant shall send notice to the EPA and the DOJ that
16 payment has been made in accordance with Section XIII (Notices and
17 Submissions) and to David Wood, PMD-6, Section Chief, U.S. EPA, Region IX,
18 75 Hawthorne Street, San Francisco, California 94105.

19 b. The three hundred seventy-six thousand and three hundred twenty
20 dollars (\$376,320) paid by Settling Defendant to the United States shall be
21 deposited in the "San Gabriel Valley Superfund Sites, Area 4, Special Account"
22 within the EPA Hazardous Substance Superfund. This Special Account shall be
23 retained and used to conduct or finance response actions at or in connection with
24 the Site or the San Gabriel Valley Superfund Sites (Areas 1- 4), or may be
25 transferred by the EPA from this Special Account to the EPA Hazardous
26 Substance Superfund.

27 c. Settling Defendant shall, within fifteen (15) working Days after
28 entry of this Consent Decree, remit the principal of two thousand dollars (\$2,000)

to the State DTSC. Payment to the State DTSC shall be made by certified check or cashier's check, made payable to "Cashier of the Department of Toxic Substances Control," Department of Toxic Substances Control, State of California, Accounting Office, 1001 I Street, Sacramento, California 96814. Settling Defendant shall send a transmittal letter with the check, referencing the San Gabriel Superfund Sites, Area 4 (Puente Valley Operable Unit), Project Code No. 300346. Settling Defendant also shall send notice, including a copy of the check and transmittal letter, to the State DTSC as provided in Section XIII (Notices and Submissions).

VI. FAILURE TO COMPLY WITH REQUIREMENTS

5. Interest on Late Payments. In the event that any payment required under Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalties) is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment. Settling Defendant shall be liable for any such Interest pertaining to the payments required under Section V, paragraphs 4. a. and c. (Reimbursement of Response Costs).

6. Stipulated Penalties.

a. Settling Defendant shall be liable for stipulated penalties for late payments under Section V, paragraphs 4. a. and c. (Reimbursement of Response Costs) and for the Interest on late payments for Section V, paragraphs 4. a. and c. as required under Section VI, Paragraph 5. The stipulated penalties shall be in the following amounts per violation per Day that any such payment is late:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1500	15th through 30th Day
\$2500	31st Day and beyond

Each of the payments required under Section V (Reimbursement of Response Costs) shall be considered a separate violation for purposes of calculating

1 stipulated penalties under this provision.

2 b. Settling Defendant shall be liable for stipulated penalties in the
3 amount of \$1500 per Day per violation of the provisions contained in Sections XI
4 (Access To Information), and XII (Retention of Records).

5 7. All Interest and penalties set forth under this Section shall begin to
6 accrue on the Day a violation occurs, and shall continue to accrue through the final
7 Day of the correction of the noncompliance. Nothing herein shall prevent the
8 simultaneous accrual of separate penalties for separate violations of this Consent
9 Decree.

10 8. Interest and stipulated penalties shall accrue as provided in
11 Paragraphs 5 and 6, regardless of whether EPA or DTSC has notified Settling
12 Defendant of the violation or made a demand for payment, but need be paid only
13 upon demand.

14 9. Interest and stipulated penalties set forth under this Section shall be
15 due and payable within 30 Days of the date of demand for payment. All payments
16 to the United States under this Paragraph shall be made by certified or cashier's
17 check made payable to the "EPA Hazardous Substances Superfund," shall be
18 forwarded to the U.S. EPA, Region IX, Superfund Accounting, P.O. Box
19 360863M, Pittsburgh, PA 15251, shall indicate that payment is for Interest and/or
20 stipulated penalties, and shall reference EPA Region IX, the Site/Spill
21 Identification Numbers 09-8V, the USAO File Number, the DOJ Case Number 90-
22 11-2-354/23, and the name and address of the party making payment. Copies of
23 check(s) paid pursuant to this Paragraph, and any accompanying transmittal
24 letter(s), shall be forwarded to the DOJ and the EPA as provided in Section XIII
25 (Notices and Submissions), and to David Wood, PMD-6, Section Chief, U.S. EPA
26 Region IX, 75 Hawthorne Street, San Francisco, California 94105. Payment to the
27 State DTSC under this Paragraph shall be made by certified check or cashier's
28 check, made payable to "Cashier of the Department of Toxic Substances Control,"

1 and shall be forwarded to the Department of Toxic Substances Control, State of
2 California, Accounting Office, 1001 I Street, Sacramento, California 96814.
3 Settling Defendant shall send a transmittal letter with the check, referencing the
4 San Gabriel Superfund Sites, Area 4 (Puente Valley Operable Unit), Project Code
5 No. 300346. Settling Defendant also shall send notice, including a copy of the
6 check and transmittal letter, to the State DTSC as provided in Section XIII
7 (Notices and Submissions).

8 10. Notwithstanding any other provision of this Section, the United States
9 and/or the State DTSC may, in its unreviewable discretion, waive any portion of
10 Interest or stipulated penalties that have accrued pursuant to this Consent Decree.

11 11. Payments made under Paragraphs 5 through 9 shall be in addition to
12 any other remedies or sanctions available to Plaintiffs by virtue of Settling
13 Defendant's failure to comply with the requirements of this Consent Decree.

14 12. If the United States and/or the State DTSC brings an action against
15 any Settling Defendant to enforce this Consent Decree, Settling Defendant shall
16 reimburse the United States and/or the State DTSC for all costs of such action,
17 including but not limited to costs of attorney time.

18 VII. COVENANT NOT TO SUE BY PLAINTIFFS

19 13. Covenant Not to Sue. Except as specifically provided in Paragraph
20 14 (Reservation of Rights), Plaintiffs covenant not to sue or to take
21 administrative action against Settling Defendant for performance of Response
22 Work, Past Response Costs, Future Response Costs, Past DTSC Response Costs,
23 and Future DTSC Response Costs, pursuant to Section 7003 of RCRA, 42 U.S.C.
24 § 6973, or Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a).
25 This covenant shall take effect upon receipt by Plaintiffs of the payments set forth
26 in Paragraph 4. This covenant is conditioned upon Settling Defendant's
27 satisfactory performance of its obligations under this Consent Decree. This
28 covenant extends only to Settling Defendant and does not extend to any other

1 person.

2 14. Reservation of Rights. The covenant not to sue set forth in Paragraph
3 13 does not pertain to any matters other than those expressly specified therein. The
4 Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights
5 against Settling Defendant with respect to other matters, including but not limited
6 to:

- 7 a. liability for failure by Settling Defendant to meet a requirement
- 8 of this Consent Decree;
- 9 b. liability for damages for injury to, destruction of, or loss of
- 10 natural resources, and for the costs of any natural resource damage assessments;
- 11 c. criminal liability; and
- 12 d. liability for response actions and response costs incurred or to
- 13 be incurred by the United States not covered as "matters addressed" as set forth in
- 14 Paragraph 18 of this Consent Decree, including but not limited to liability for any
- 15 response actions and response costs at the Site that occur after the later of (i) the
- 16 date 8 years from the Operational and Functional Date of the Carrier Consent
- 17 Decree, or (ii) the date of issuance of a final Record of Decision for the Site.

18 **VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

19 15. Settling Defendant covenants not to sue and agrees not to assert any
20 claims or causes of action against Plaintiffs or their contractors or employees with
21 respect to Response Work, Past Response Costs, Future Response Costs, Past
22 DTSC Response Costs, and Future DTSC Response Costs, as set forth in this
23 Consent Decree, including but not limited to:

- 24 a. any direct or indirect claims for reimbursement from the
- 25 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
- 26 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
- 27 other provision of law;
- 28 b. any claims arising out of costs or response actions at or in

1 connection with the Site, including any claim under the United States Constitution,
 2 the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
 3 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

4 c. any claims against the United States pursuant to Sections 107
 5 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

6 16. Nothing in this Consent Decree shall be deemed to constitute
 7 approval or preauthorization of a claim within the meaning of Section 111 of
 8 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

9 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

10 17. Nothing in this Consent Decree shall be construed to create any rights
 11 in, or grant any cause of action to, any person not a Party to this Consent Decree.
 12 Each of the Parties expressly reserves any and all rights (including, but not limited
 13 to, any right to contribution), defenses, claims, demands, and causes of action
 14 which each Party may have with respect to any matter, transaction, or occurrence
 15 relating in any way to the Site against any person not a Party hereto.

16 18. The Parties agree that in consideration of the payment made by
 17 Settling Defendant and the execution of this Consent Decree, Settling Defendant
 18 has resolved its liability to Plaintiffs and is entitled to protection from contribution
 19 actions or claims as provided by Section 113(f)(2) of CERCLA,
 20 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree,
 21 conditioned only upon entry of this Consent Decree. The "matters addressed" in
 22 this Consent Decree are: Response Work; Past Response Costs; Future Response
 23 Costs; Past DTSC Response Costs; and Future DTSC Response Costs. The
 24 "matters addressed" exclude those response actions and response costs to which
 25 Plaintiffs have reserved their rights under this Consent Decree.

26 19. Settling Defendant agrees that, with respect to any suit or claim for
 27 contribution brought by it for matters related to this Consent Decree, it will notify
 28 the DOJ, the EPA, and the State DTSC in writing not later than sixty (60) Days

1 prior to the initiation of such suit or claim. Settling Defendant also agrees that,
2 with respect to any suit or claim for contribution brought against it for matters
3 related to this Consent Decree, it will notify the DOJ, EPA, and the State DTSC in
4 writing within ten (10) Days of service of the complaint or claims upon it. In
5 addition, Settling Defendant shall notify the DOJ, EPA, and the State DTSC
6 within ten (10) Days of service or receipt of any motion for summary judgment or
7 any order from a court setting a case for trial, for matters related to this Consent
8 Decree.

9 20. In any subsequent administrative or judicial proceeding initiated by
10 the United States or the State of California for injunctive relief, recovery of
11 response costs, or other relief relating to the Site, Settling Defendant shall not
12 assert, and may not maintain, any defense or claims based upon the principles of
13 waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
14 defenses based upon any contention that the claims raised by the United States or
15 the State of California in the subsequent proceeding were or should have been
16 brought in the instant case; provided, however, that nothing in this Paragraph
17 affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in
18 Section VII.

19 X. SITE ACCESS

20 21. Commencing upon the date of lodging of this Consent Decree,
21 Settling Defendant agrees to provide the United States and the State of California
22 and their representatives, including the EPA, the DTSC, and the Los Angeles
23 Regional Water Quality Control Board, and their contractors, access at all
24 reasonable times to the property within the Site owned or controlled by Settling
25 Defendant to which access is determined by the EPA or the State of California to
26 be required for the implementation of this Consent Decree, or for the purpose of
27 conducting any response activity related to the Site, including but not limited to:

- 28 a. Monitoring of investigation, removal, remedial or other

1 activities at the Site;

2 b. Verifying any data or information submitted to the United
3 States or to the State of California;

4 c. Conducting investigations relating to contamination at or near
5 the Site;

6 d. Obtaining samples;

7 e. Assessing the need for, planning, or implementing response
8 actions at or near the Site; and

9 f. Inspecting and copying records, operating logs, contracts, or
10 other documents maintained or generated by Settling Defendant or its agents,
11 consistent with Section XI (Access to Information).

12 22. Notwithstanding any provision of this Consent Decree, the United
13 States and the State of California retain all of their access authorities and rights,
14 including enforcement authorities related thereto, under CERCLA, the Resource
15 Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable
16 statutes or regulations.

17 **XI. ACCESS TO INFORMATION**

18 23. Settling Defendant shall provide to Plaintiffs, upon request, copies of
19 all documents and information within its possession or control or that of its
20 contractors or agents relating in any manner to response actions taken at the Site
21 or the liability of any person for response actions conducted and to be conducted
22 at the Site, including, but not limited to, sampling, analysis, chain of custody
23 records, manifests, trucking logs, receipts, reports, sample traffic routing,
24 correspondence, or other documents or information related to the Site.

25 **24. Confidential Business Information and Privileged Documents.**

26 a. Settling Defendant may assert business confidentiality claims
27 covering part or all of the documents or information submitted to Plaintiffs under
28 this Consent Decree to the extent permitted by and in accordance with Section

1 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
2 Documents or information determined to be confidential by Plaintiffs will be
3 accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
4 confidentiality accompanies documents or information when they are submitted to
5 the Plaintiffs, or if Plaintiffs have notified Settling Defendant that the documents
6 or information are not confidential under the standards of Section 104(e)(7) of
7 CERCLA, the public may be given access to such documents or information
8 without further notice to Settling Defendant.

9 b. Settling Defendant may assert that certain documents, records
10 or other information are privileged under the attorney-client privilege or any other
11 privilege recognized by federal law. If Settling Defendant asserts such a privilege
12 in lieu of providing documents, it shall provide Plaintiffs with the following:
13 1) the title of the document, record, or information; 2) the date of the document,
14 record, or information; 3) the name and title of the author of the document, record,
15 or information; 4) the name and title of each addressee and recipient; 5) a
16 description of the subject of the document, record or information; and 6) the
17 privilege asserted. However, no documents, reports, or other information created
18 or generated pursuant to the requirements of this or any other consent decree with
19 Plaintiffs shall be withheld on the grounds that they are privileged. If a claim of
20 privilege applies only to a portion of a document, the document shall be provided
21 to Plaintiffs in redacted form to mask the privileged information only. Settling
22 Defendant shall retain all records and documents that it claims to be privileged
23 until Plaintiffs have had a reasonable opportunity to dispute the privilege claim
24 and any such dispute has been resolved in the Settling Defendant's favor.

25 25. No claim of confidentiality shall be made with respect to any data,
26 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,
27 scientific, chemical, or engineering data, or any other documents or information
28 evidencing conditions at or around the Site.

XII. RETENTION OF RECORDS

26. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control thereafter, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. After five (5) years, Settling Defendant may contact the EPA in writing to request instructions as to whether such records and documents shall be maintained for the remaining five (5) year retention period, or whether such records and documents may be discarded. No retained records or documents shall be disposed of prior to the ten (10) year retention period, unless Settling Defendant receives instructions from the EPA specifically permitting Settling Defendant to dispose of such records and documents.

27. After the conclusion of the ten (10) year document retention period in the preceding Paragraph, Settling Defendant shall notify the EPA and the DOJ at least ninety (90) Days prior to the destruction of any such records or documents, and, upon request by the EPA or the DOJ, Settling Defendant shall deliver any such records or documents to EPA subject to the same privilege provisions set forth in Section XI (Access To Information).

28. By signing this Consent Decree, Settling Defendant certifies individually that, after thorough inquiry, to the best of its knowledge and belief, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against Settling Defendant regarding the Site; and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of

1 RCRA, 42 U.S.C. § 6927.

2 **XIII. NOTICES AND SUBMISSIONS**

3 29. Whenever, under the terms of this Consent Decree, notice is required
4 to be given or a document is required to be forwarded by one party to another, it
5 shall be directed to the individuals at the addresses specified below, unless those
6 individuals or their successors give notice of a change to the other Parties in
7 writing. Written notice as specified herein shall constitute complete satisfaction of
8 any written notice requirement of the Consent Decree with respect to the United
9 States (the DOJ and the EPA), the State of California DTSC, and Settling
10 Defendant, respectively.

11 As to the United States:

12 As to DOJ:

13 Bruce S. Gelber
14 Chief, Environmental Enforcement Section
15 Environment and Natural Resources Division
16 U.S. Department of Justice (DJ # 90-11-2-354/23)
17 P.O. Box 7611
18 Washington, D.C. 20044-7611

19 Matthew A. Fogelson
20 Trial Attorney
21 Environmental Enforcement Section
22 Environment and Natural Resources Division
23 U.S. Department of Justice
24 301 Howard Street, Suite 1050
25 San Francisco, CA 94105

26 As to EPA:

27 Dustin Minor (ORC-3)
28 Senior Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

As to the State of California Department of Toxic Substances Control:

Ann Rushton
Deputy Attorney General, Environment Section
California Department of Justice
300 South Spring Street, #5000
Los Angeles, California 90013

Jacalyn Spizman
Project Manager, Site Mitigation Branch
Department of Toxic Substances Control, Region 3
5796 Corporate Avenue
Cypress, California 90630

As to Settling Defendant:

Lauren P. Alterman
Associate General Counsel
Saint-Gobain Corporation
750 E. Swedesford Road
Valley Forge, PA 19482

Settling Defendant may change the identity or contact information for its agent at any time by written notice to the Court and to the United States.

XIV. RETENTION OF JURISDICTION

30. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

31. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

33. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any

1 litigation between the Parties.

2 **XVII. EFFECTIVE DATE**

3 34. The effective date of this Consent Decree shall be the date upon
4 which it is entered by the Court.

5 **XVIII. SIGNATORIES/SERVICE**

6 35. Each undersigned representative of Settling Defendant, the Assistant
7 Attorney General for the Environment and Natural Resources Division of the
8 United States Department of Justice, and together for the State of California, the
9 Deputy Attorney General and the Chief of Operations, Southern California
10 Cleanup Operations Branch Cypress Office, certifies that he or she is authorized to
11 enter into the terms and conditions of this Consent Decree and to execute and bind
12 legally such Party to this document.

13 36. Settling Defendant hereby agrees not to oppose entry of this Consent
14 Decree by this Court or to challenge any provision of this Consent Decree, unless
15 the United States has notified Settling Defendant in writing that it no longer
16 supports entry of the Consent Decree.

17 37. Settling Defendant shall identify, on the attached signature page, the
18 name and address of an agent who is authorized to accept service of process by
19 mail on behalf of that Party with respect to all matters arising under or relating to
20 this Consent Decree. Settling Defendant hereby agrees to accept service in that
21 manner and to waive the formal service requirements set forth in Rule 4 of the
22 Federal Rules of Civil Procedure and any applicable local rules of this Court,
23 including, but not limited to, service of a summons.


24 **XIX. FINAL JUDGMENT**

25 38. Upon approval and entry of this Consent Decree by this Court, this
26 Consent Decree shall constitute a final judgment between and among the United
27 States, the State of California DTSC, and Settling Defendant. The Court finds that
28 there is no just reason for delay and therefore enters this judgment as the final

IT IS SO ORDERED

1 judgment under Fed. R. Civ. P. 54 and 58.
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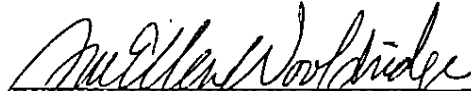
4 SO ORDERED THIS 25 DAY OF January, 2007.
5

6 
7 AUDREY B. COLLINS
8 United States District Judge
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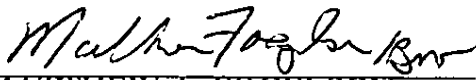
1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR THE UNITED STATES OF AMERICA

5
6
7 Dated: 10-31-06


8 SUE ELLEN WOOLDRIDGE
9 Assistant Attorney General
10 Environment & Natural Resources Division
11 United States Department of Justice
12

13 Dated: 10-31-06


14 MATTHEW A. FOGELSON
15 ELIZABETH F. KROOP
16 Trial Attorneys
17 Environmental Enforcement Section
18 Environment & Natural Resources Division
19 United States Department of Justice
20 301 Howard Street, Suite 1050
21 San Francisco, CA 94105
22 Telephone: (415) 744-6470
23 Telecopier: (415) 744-6476
24
25
26
27
28

1 Dated: 9/24/06

2 *for* *Nancy Liden*
3 KEITH TAKATA
4 Director
5 Superfund Division
6 U.S. Environmental Protection Agency
7 Region 9
8 75 Hawthorne Street
9 San Francisco, CA 94105

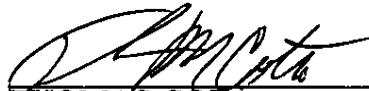
10 Dated: 9/26/06

11 *Dustin Minor*
12 DUSTIN MINOR
13 Senior Counsel
14 Office of Regional Counsel
15 U.S. Environmental Protection Agency
16 Region 9
17 75 Hawthorne Street
18 San Francisco, CA 94105
19
20
21
22
23
24
25
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27
28


1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4
5 FOR THE STATE OF CALIFORNIA
6 DEPARTMENT OF TOXIC
7 SUBSTANCES CONTROL

8 Dated: 10/11/06


9 THOMAS COTA
10 Chief, Southern California
11 Cleanup Operations Branch
12 Cypress Office
13 5796 Corporate Avenue
14 Cypress, CA 90630

15
16 Dated: 10-26-06


17 ANN RUSHTON
18 Deputy Attorney General
19 Environment Section
20 California Department of Justice
21 300 South Spring Street, #5000
22 Los Angeles, California 90013
23
24
25
26
27
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR SAINT-GOBAIN CORPORATION (as
5 successor in interest to Saint-Gobain Calmar Inc.)

6
7 Dated: 8/22/06

M. Shawn Ruccio
8 Senior Vice President - Finance

9 Saint-Gobain Corporation
750 E. Swedesford Road
Valley Forge, PA 19482
10 Telephone: (610) 341-7000
11 Telecopier: (610) 341-7087

12
13 Agent authorized to receive service of process pursuant to Paragraph 37:

14 Lauren P. Alterman
Associate General Counsel
15 Saint-Gobain Corporation
750 E. Swedesford Road
16 Valley Forge, PA 19482

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APPENDIX A

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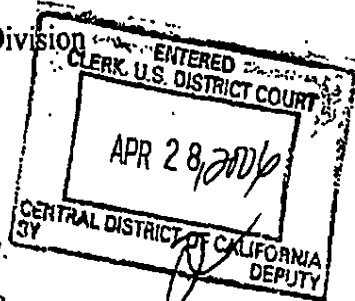
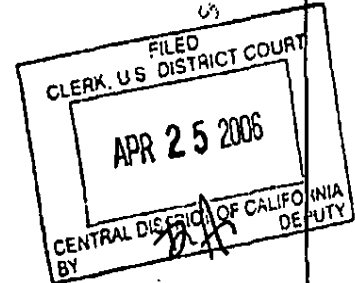
SCANNED

1 SUE ELLEN WOOLDRIDGE
 2 Assistant Attorney General
 3 Environment & Natural Resources Division
 4 United States Department of Justice

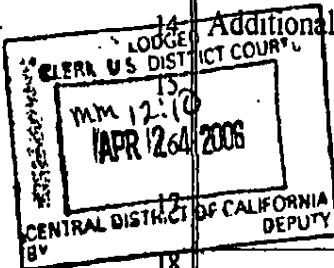
5 MATTHEW A. FOGELSON
 6 Environmental Enforcement Section
 7 Environment & Natural Resources Division
 8 United States Department of Justice
 9 301 Howard Street, Suite 1050
 10 San Francisco, CA 94105
 11 Telephone: (415) 744-6470
 12 Facsimile: (415) 744-6476
 13 E-mail: Matthew.Fogelson@usdoj.gov

14 ELIZABETH F. KROOP
 15 Environmental Enforcement Section
 16 Environment & Natural Resources Division
 17 United States Department of Justice
 18 P.O. Box 7611
 19 Ben Franklin Station
 20 Washington, DC 20044
 21 Telephone: (202) 514-5244
 22 Facsimile: (202) 514-2583
 23 E-mail: Elizabeth.Kroop@usdoj.gov

24 Additional Counsel Listed on Next Page



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 ✓ Scan only



IN THE UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

18 UNITED STATES OF AMERICA,
 19 Plaintiff,
 20 v.
 21 CARRIER CORPORATION,
 22 Defendant.
 23

Case No. CV-05-6022 ABC (FMOx)

AMENDED CONSENT DECREE

29

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Basin-wide Response Costs" shall mean costs, including but not limited to

1 direct and indirect costs, including accrued Interest, that the United States has
2 incurred or in the future incurs for basin-wide (non-operable unit) response actions
3 in connection with the San Gabriel Valley Superfund Sites, Areas 1 - 4.

4 "CERCLA" shall mean the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
6 "Consent Decree" shall mean this Decree and all appendices attached hereto (listed
7 in Section XXX). In the event of conflict between this Decree and any appendix,
8 this Decree shall control.

9 "Day" shall mean a calendar day unless expressly stated to be a working
10 day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal
11 holiday. In computing any period of time under this Consent Decree, where the
12 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
13 until the close of business of the next working day.

14 "DOJ" shall mean the United States Department of Justice and any of its
15 successor departments, agencies, or instrumentalities.

16 "DTSC" shall mean the California Department of Toxic Substances Control
17 and any successor departments or agencies.

18 "Effective Date" shall be the effective date of this Consent Decree as
19 provided in Paragraph 117.

20 "Eligible SEP Costs" shall include the costs of implementing the
21 Supplemental Environmental Project (SEP) required pursuant to Section XVIII,
22 but do not include Settling Defendants' overhead, administrative expenses or legal
23 fees. Contractor oversight costs not exceeding 5% of \$468,750 may be included as
24 Eligible SEP Costs, so long as adequate documentation is provided.

25 "EPA" shall mean the United States Environmental Protection Agency and
26 any of its successor departments or agencies.

27 "Explanation of Significant Differences" or "ESD" shall mean the
28 Explanation of Significant differences relating to the Site issued by EPA on June

1 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

2 "Future Response Costs" shall mean all costs that are incurred by the United
3 States or any third party for response actions with respect to the Site after the
4 Effective Date, but prior to the later of (i) the date 8 years from the Operational and
5 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
6 Site. Future Response Costs include, but are not limited to, Basin-wide Response
7 Costs allocated to the Site, direct and indirect costs and accrued interest that the
8 United States incurs in reviewing or developing plans, reports, and other items
9 pursuant to this Consent Decree, verifying the Work, or otherwise implementing,
10 overseeing, or enforcing this Consent Decree, including but not limited to payroll
11 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to
12 Sections VII (Remedy Review), IX (Access and Institutional Controls; including
13 but not limited to the cost of attorney time and any monies paid to secure access or
14 to secure or implement institutional controls including but not limited to the
15 amount of just compensation), XV (Emergency Response), and Paragraph 99 of
16 Section XXII (Work Takeover).

17 "Interest," shall mean interest at the rate specified for interest on investments
18 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
19 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
20 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
21 interest accrues. The rate of interest is subject to change on October 1 of each
22 year.

23 "Interim ROD" shall mean the Interim Record of Decision relating to the
24 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on
25 September, 30 1998 by the Regional Administrator, EPA Region 9, or his/her
26 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A
27 to this Consent Decree.

28 "Mid-Valley Monitoring" shall mean the installation and monitoring of

1 wells in the intermediate and deep groundwater zones in the mid-valley area of the
2 Site to monitor vertical and horizontal contaminant migration in such groundwater
3 zones, as set forth in the SOW. For purposes of this Consent Decree, the mid-
4 valley shall extend from Azusa Avenue to Puente Creek.

5 "National Contingency Plan" or "NCP" shall mean the National Oil and
6 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
7 Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300,
8 and any amendments thereto.

9 "Operational and Functional" shall mean that the Remedial Action, or a
10 phase thereof, has been constructed and that it is performing in accordance with the
11 applicable SOW and the applicable final Remedial Design/ Remedial Action Work
12 Plans and other plans approved by EPA.

13 "Operational and Functional Date" shall mean the date that all phases of the
14 Remedial Action are Operational and Functional pursuant to Paragraph 50.

15 "Paragraph" shall mean a portion of this Consent Decree identified by an
16 Arabic numeral or an upper case letter.

17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including but not limited to
19 Basin-wide Response Costs allocated to the Site, direct and indirect costs,
20 including Interest, that the United States or any third party has paid or incurred at
21 or in connection with the Site, through and including the Effective Date.

22 "Performance Criteria" shall mean the prevention of groundwater in the
23 shallow zone north of Puente Creek at the mouth of Puente Valley with
24 contamination greater than or equal to ten-times the levels listed in Table 2 of the
25 ESD from:

- 26 (1) migrating beyond its lateral extent as measured at the time the
27 shallow zone Remedial Action containment system is Operational and
28 Functional; and

1 (2) migrating vertically into the intermediate zone;
2 for a period of 8 years from the Operational and Functional Date.

3 "Plaintiff" shall mean the United States.

4 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
5 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

6 "Remedial Action" shall mean those activities to be undertaken by Settling
7 Defendants to implement the shallow zone remedy north of Puente Creek and Mid-
8 Valley Monitoring, in accordance with the Interim ROD as modified by the ESD,
9 the applicable SOW, and the applicable Remedial Design/ Remedial Action Work
10 Plans and other plans approved by EPA.

11 "Remedial Action Work Plan" shall mean the document developed pursuant
12 to Paragraph 11 of this Consent Decree and approved by EPA, and any
13 amendments thereto.

14 "Remedial Design" shall mean those activities to be undertaken by Settling
15 Defendants to develop the final plans and specifications for the Remedial Action
16 pursuant to the Remedial Design Work Plan.

17 "Remedial Design Work Plan" shall mean the document developed pursuant
18 to Paragraph 10 of this Consent Decree and approved by EPA, and any
19 amendments thereto.

20 "Section" shall mean a portion of this Consent Decree identified by a Roman
21 numeral.

22 "SEP" shall mean the Woodland Duck Farm Supplemental Environmental
23 Project as described in Paragraph 62, or any alternative Supplemental
24 Environmental Project approved by EPA pursuant to Paragraph 63.

25 "SEP Implementation Plan" shall the mean the document describing the SEP
26 and setting forth those activities required to implement the SEP.

27 "Settling Defendants" shall mean Carrier Corporation and United
28 Technologies Corporation.

1 "Site" shall mean the area of groundwater contamination in Los Angeles
2 County, California, located in the geographic area designated on the National
3 Priorities List as the San Gabriel Valley Superfund Site, Area 4 [see 49 Fed. Reg.
4 19480 (1984)], and identified as the Puente Valley Operable Unit.

5 "State" shall mean the California Department of Toxic Substances Control
6 ("DTSC").

7 "Statement of Work" or "SOW" shall mean the statement of work for
8 implementation of the Remedial Design and Remedial Action at the Site, as set
9 forth in Appendix D to this Consent Decree and any modifications made in
10 accordance with this Consent Decree.

11 "Supervising Contractor" shall mean the principal contractor retained by the
12 Settling Defendants to supervise and direct the implementation of the Work under
13 this Consent Decree.

14 "Unilateral Administrative Order Docket No. 2001-20" or "UAO Docket
15 No. 2001-20" shall mean the order issued by EPA to Carrier Corporation on or
16 about September 13, 2001.

17 "United States" shall mean the United States of America.

18 "Waste Material" shall mean (1) any "hazardous substance" under Section
19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"
21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous
22 material" under the California Hazardous Waste Control Act Section 25100 et seq.

23 "Work" shall mean all activities Settling Defendants are required to perform
24 under this Consent Decree, except those required by Section XXVI (Retention of
25 Records) and Section XVIII (Supplemental Environmental Projects).

26 V. GENERAL PROVISIONS

27 5. Objectives of the Parties. The objectives of the Parties in entering into
28 this Consent Decree are to protect public health or welfare or the environment at

1 Decree.

2 XIV. CERTIFICATION OF COMPLETION

3 50. "Operational and Functional"

4 a. Within 30 Days after Settling Defendants conclude that the
5 Remedial Action is Operational and Functional, Settling Defendants shall schedule
6 and conduct a pre-certification inspection to be attended by Settling Defendants
7 and EPA. If, after the pre-certification inspection, the Settling Defendants still
8 believe that the Remedial Action is Operational and Functional, they shall submit a
9 written report requesting certification to EPA for approval, with a copy to the
10 State, pursuant to Section XI (EPA Approval of Plans and Other Submissions)
11 within 30 Days of the inspection. In the report, a registered professional engineer
12 and the Settling Defendants' Project Coordinator shall state that the Remedial
13 Action is Operational and Functional. The written report shall include as-built
14 drawings signed and stamped by a professional engineer. The report shall contain
15 the following statement, signed by a responsible corporate official of a Settling
16 Defendant or the Settling Defendants' Project Coordinator:

17 To the best of my knowledge, after thorough investigation, I certify
18 that the information contained in or accompanying this submission is
19 true, accurate and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

20 If, after completion of the pre-certification inspection and receipt and review of the
21 written report, EPA, after reasonable opportunity to review and comment by
22 DTSC, determines that the Remedial Action is not Operational and Functional,
23 EPA will notify Settling Defendants in writing of the activities that must be
24 undertaken by Settling Defendants pursuant to this Consent Decree in order for the
25 Remedial Action to be Operational and Functional. EPA will set forth in the notice
26 a schedule for performance of such activities consistent with the Consent Decree
27 and the SOW or require the Settling Defendants to submit a schedule to EPA for
28 approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

1 Settling Defendants shall perform all activities described in the notice in
2 accordance with the specifications and schedules established pursuant to this
3 Paragraph, subject to their right to invoke the dispute resolution procedures set
4 forth in Section XX (Dispute Resolution).

5 b. If EPA concludes, based on the initial or any subsequent report
6 requesting certification, and after a reasonable opportunity for review and
7 comment by DTSC, that the Remedial Action is Operational and Functional, EPA
8 will so certify in writing to Settling Defendants.

9 c. If EPA fails to certify that the Remedial Action is Operational
10 and Functional within 90 Days after a request, EPA shall be deemed to have denied
11 the request, unless Settling Defendants agree to an extension of time. Settling
12 Defendants may, at any time thereafter, invoke Dispute Resolution pursuant to
13 Section XX (Dispute Resolution).

14 d. Nothing herein shall preclude Settling Defendants from
15 requesting, and EPA from granting, pursuant to the same procedures set forth in
16 Subparagraphs a-c of this Paragraph, certification that a phase of the Remedial
17 Action is Operational and Functional; provided, however, that any such
18 certification shall be conditioned on such phase remaining Operational and
19 Functional at the time Settling Defendants request certification for the final phase
20 of the Remedial Action. In the event Settling Defendants request certification that
21 a phase of the Remedial Action is Operational and Functional, and such request is
22 granted, the resulting certification shall not affect the Operational and Functional
23 Date.

24 e. Upon approval of the certification report by EPA or pursuant to
25 a ruling by the Court, the Operational and Functional Date shall be the date when
26 the last report requesting certification of the final phase of the Remedial Action
27 was submitted.

28 f. The Operational and Functional Date established pursuant to

1 this Paragraph shall not be affected if existing contamination greater than or equal
2 to ten-times the levels listed in Table 2 of the SOW has migrated vertically into the
3 intermediate zone and this existing contamination prevents Settling Defendants
4 from meeting the Performance Criteria, provided the Settling Defendants are
5 taking the response actions determined by EPA to be necessary to reverse the trend
6 pursuant to the SOW.

7 g. Once EPA has determined that the Remedial Action is
8 Operational and Functional pursuant to this Paragraph, the Operational and
9 Functional Date shall not be affected in the event EPA subsequently determines,
10 pursuant to Paragraph 13, that modification to the Work specified in the SOW or in
11 work plans developed pursuant to the SOW is necessary to achieve and maintain
12 the Performance Criteria, to meet discharge ARARs, or to implement Mid-Valley
13 Monitoring.

14 51. Certification of Completion.

15 a. No later than 90 Days before, and no sooner than 120 Days
16 prior to, the eight-year anniversary of the Operational and Functional Date, and
17 upon Settling Defendants concluding that the Remedial Action is still Operational
18 and Functional, Settling Defendants shall schedule a pre-certification inspection to
19 be attended by Settling Defendants and EPA. The Settling Defendants shall submit
20 a Facility Status Package to EPA which shall include, but not be limited to, all
21 maintenance reports, performance reports, sampling results, and all other
22 deliverables updated as appropriate to reflect the performance and condition of the
23 containment and Mid-Valley Monitoring systems including all wells, pipelines,
24 and treatment facilities. If, after the pre-certification inspection, the Settling
25 Defendants still believe that the Remedial Action is Operational and Functional,
26 Settling Defendants shall submit a written report by a registered professional
27 engineer, in accordance with the SOW, stating that the Remedial Action is
28 Operational and Functional. The report shall contain the following statement,